110-695

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 834.

DANIEL RICE, APPELLANT,

vs.

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED FEBRUARY 26, 1883.

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1 United States Circuit Court, eighth circuit, district of Minnesota.

Appeal from said Circuit Court to the Supreme Court.

DANIEL RICE, appellant,
vs.
THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY, respondent. } In Equity.

To the honorable the Supreme Court of the United States:

Appeal of Daniel Rice, the above-named defendant in the court below, appellant, respectfully showeth:

That upon the 21st day of June, A. D. 1880, the above-named respondent, complainant in the court below, filed its bill in the Circuit Court of the United States for the eighth circuit, district of Minnesota, against the above-named appellant, pretending to show to said court that said railroad company, complainant, was in equity the owner of the lands in said bill of complaint described, and
2 that by the certain unlawful acts of the Secretary of the Department of the Interior of the United States Government and the governor and other officers of the state of Minnesota the legal title to said lands had become vested in this appellant, and thereupon demanded a decree of said Circuit Court divesting this appellant of said legal title and vesting the same in the respondent.

And thereafterwards, at the June term of said Circuit Court, 1881, this appellant, having answered the complainant's said bill of complaint showing that he was the owner of said lands but legally and equitably and in fee-simple, and the complainant having filed the general replication to said answer, and the parties having filed a stipulation showing the facts agreed upon by them, this cause was brought on for hearing upon said bill of complaint, answer, and stipulation.

And, after hearing the counsel for the respective parties, the judges of said Circuit Court did render the following opinion in said cause, to wit:

3 U. S. Circuit Court, Minnesota district, June term, 1881.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY
vs.
DANIEL RICE.

E. C. Palmer, for complainant; J. B. Sanborn, for defendant.

PER CURIAM.—This suit is instituted to establish the superior right of the complainants to the land in controversy. The equitable title is clear to be in the complainant, and the legal title in the defendant.

The defendant's title is derived from the state of Minnesota by

conveyance under the authority of an act of the legislature, the land being described as swamp and certified to the state as swamp lands belonging to it by virtue of the acts of Congress approved Sept. 28th, 1850, and March 12th, 1860.

The complainants' title is clear to be derived under the act of Congress passed March 3d, 1857, granting lands to the territory or future state of Minnesota to aid in the construction of rail-
4 roads, and subsequent acts disposing of those lands for that purpose, passed by the legislature of the state March 8th, 1861, and March 4th, 1864.

Conclusions.

I. The state of Minnesota was admitted into the Union May 11th, 1858, and the title under the swamp-land act did not take effect until the date of this act of admission.

II. The title to the lands in controversy was in the United States at the time of the passage of the act granting lands to the territory or future state of Minnesota for the construction of railroads, approved March 3d, 1857, and there is nothing in the act of Congress of September 28th, 1850, which prevented Congress from granting this land for that purpose.

III. This land was not reserved out of that grant by any of the provisions embraced in the act of March 3d, 1857, but is located within the limits prescribed therein and inured to the complainants' benefit, and the title became vested in it by virtue of the acts of the legislature of the state of Minnesota approved March 8th, 1861, and March 4th, 1864.

The complainants are therefore entitled to a decree, and it is so ordered.

5 That thereafterwards, on the eleventh day of July, A. D. 1881, a final decree was made and pronounced in said cause, wherein it was adjudged and decreed as follows, to wit:

In the Circuit Court of the United States for the district of Minnesota.

THE SIOUX CITY AND SAINT PAUL RAILROAD CO.
against
DANIEL RICE.

At the stated term of the Circuit Court of the United States of America for the district of Minnesota, in the eighth circuit, held in the city of Saint Paul on the twenty-first day of June, in the year of our Lord one thousand eight hundred and eighty-one—

Present: The Honorable George W. McCrary, circuit judge, and Honorable Rensselaer R. Nelson, district judge.

This cause having come on to be heard upon the bill of complaint herein, the answer thereto of the defendant, Daniel Rice,
6 the replication of the complainant to such answer, and the proof, oral, documentary and written, taken, made, stipulated

and filed in said cause, and having been argued the counsel for the respective parties:

Now, therefore, on consideration thereof, it is ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree as follows, viz:

That the said complainant, the Sioux City and Saint Paul Railroad Company, is the owner in fee-simple of the following described lands situate in the state of Minnesota, being all the lands described in schedule "A," attached to the bill of complaint in this cause, to wit:

The southwest quarter of the southwest quarter of section twenty-one (21), in township one hundred and six (106), range thirty-five (35), containing forty (40) acres. The southwest quarter of the southeast quarter and the northwest quarter of the northeast quarter of section twenty-seven (27), containing eighty (80) acres. The northeast quarter of the northeast quarter of section twenty-nine (29), containing forty (40) acres. The southeast quarter of the southeast quarter of section thirty-three (33), containing forty (40)
7 acres, all in township one hundred and six (106), range thirty-five (35).

Also, the northwest quarter of the northwest quarter, containing forty (40) acres; the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter, the southwest quarter of the southwest quarter of section nineteen (19), containing one hundred and twenty-one and 64-100 acres.

The northeast quarter of the southwest quarter of section twenty-three (23), containing forty (40) acres; the northwest quarter of the northeast quarter of section thirty-five (35), containing forty (40) acres; all in township one hundred and six (106), range thirty-six (36).

Also the south one-half of the southwest quarter of section one (1), containing eighty (80) acres; the west one-half of the northeast quarter and the west one-half of the southeast quarter of section thirteen (13), containing one hundred and sixty (160) acres. The north one-half of the northeast quarter, the west one-half of the southeast quarter of section thirty-five (35), containing one hundred and sixty (160) acres; the southwest quarter of the southwest quarter of section twenty-nine (29), containing forty (40) acres; all in township one hundred and six (106), range thirty-seven (37).

8 That the defendant, Daniel Rice, has no right, title, interest, or estate in or to any of the lands aforesaid, and the conveyance from the state of Minnesota to him, the said Daniel Rice, purporting to convey the legal title thereto of said lands is a cloud upon the title aforesaid of the said plaintiff, and is hereby adjudged to be void and of no effect, and is hereby set aside; and said defendant is hereby decreed to convey said legal title to said lands to said plaintiff, its successors and assigns.

And in default of said Rice in making the said conveyance, this decree shall and may be recorded in the office of the register of

deeds within and for the several counties in which any of said land may be situated, and be effectual to vest said title to said lands and every part of the same in said plaintiff, the Sioux City and Saint Paul Railroad Company, its successors and assigns.

And it is further adjudged and decreed that said plaintiff recover of said defendant its costs and disbursements in this action to be taxed by the clerk of this court, on proper notice and application, and to be inserted in this judgment upon and after such taxa-
9 tion, and in default of the payment thereof that said plaintiff have execution therefor.

Said costs and disbursements as taxed amount to the sum of

R. R. NELSON, *Judge.*

Wherefore this appellant appeals from the whole of said decree of said Circuit Court of the United States, and respectfully prays that the decree of the said Circuit Court and the bill, answer, pleadings, stipulation, evidence and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the Circuit Court and every part thereof may be reversed, and a decree made dismissing said respondent's said bill, with costs, or such other decree as to the said Supreme Court shall seem just.

JOHN B. & W. H. SANBORN,
Solicitors for Appellant.

JOHN B. SANBORN,
Of Counsel.

Dated Saint Paul, Minn., July 25th, 1881.

10 United States Circuit Court, eighth circuit, district of Minnesota.

By the honorable one of the judges of the Circuit Court of the United States, eighth circuit, district of Minnesota.

To the Sioux City and Saint Paul Railroad Company, to E. C. Palmar, esq., solicitor and of counsel for the Sioux City and Saint Paul Railroad Company:

Whereas Daniel Rice has lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the eighth circuit, district of Minnesota, made in favor of you, the said Sioux City and Saint Paul Railroad Company, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday, tenth day of October, A. D. 1881, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Saint Paul, on the
11 eighth circuit, district of Minnesota, on the twelfth day of

August, in the year of our Lord one thousand eight hundred and eighty-one.

R. R. NELSON,
Judge.

12 United States Circuit Court, eighth circuit, district of Minnesota.

DANIEL RICE, appellant,
vs.
THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY, respondent.

DISTRICT OF MINNESOTA, *ss:*

H. L. Lang, being duly sworn, saith that on the 13th day of August, A. D. 1881, at Saint Paul, Minnesota, he served on the above-named appellee and respondent a copy of the appeal and a copy of the citation filed in this cause with the clerk of the Circuit Court in and for the eighth circuit, district of Minnesota, by delivering said copy of the citation to E. C. Palmer, esq., attorney of said appellee, and by leaving said copy of the appeal for said appellee in the clerk's office of the Circuit Court aforesaid.

H. L. LANG.

Sworn to this 13th day of August, 1881, before me.
[SEAL.] EDWARD P. SANBORN,
Notary Public, Minn.

13 (Endorsed:) U. S. Supreme Court; Daniel Rice, appellant, *vs.* The Sioux City and Saint Paul Railroad Company, respondent; appeal. Due service of the within appeal, citation, and papers by copy, at St. Paul, Minn., this 13th day of August, 1881, is hereby admitted. E. C. Palmer, respondent's att'y. John B. & W. H. Sanborn, att'y for appellant.

14 District Court, sixth judicial district.

STATE OF MINNESOTA,
County of Cottonwood.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY
against
DANIEL RICE.

Summons.

The state of Minnesota to the above-named defendant:

You, Daniel Rice, are hereby summoned and required to answer the complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at his office in St. Paul, in the

county of Ramsey and state aforesaid, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

E. C. PALMER,
Plaintiff's Attorney, St. Paul, Minn.

Dated Dec. 24, A. D. 1879.

15 District Court, 6th judicial district.

STATE OF MINNESOTA, }
County of Cottonwood }

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY }
against }
DANIEL RICE. }

1. The plaintiff above named alleges that it is and has been since the first day of January, 1866, a corporation duly created, organized, and acting under the laws of the state of Iowa.

That the St. Paul and Sioux City Railroad Company hereinafter named is a corporation duly organized and acting under the laws of the state of Minnesota.

2. That under and by virtue of an act of the territory of Minnesota, approved March 3d, 1855, entitled "A *bill* for an act to incorporate the Root River Valley and Southern Minnesota Railroad Company," the Root River Valley and Southern Minnesota Railroad Company was created, incorporated, and organized with all the powers, rights, franchises, and immunities in said act specified and granted.

3. That by an act of Congress, approved March 3, 1857, entitled "An act making a grant of land to the territory of Minnesota,
16 in alternate sections, to aid in the construction of certain railroads in said territory, and granting public lands in alternate sections to the state of Alabama, to aid in the construction of a [3] certain railroad in said state," the United States granted to the territory of Minnesota, to aid in the construction of railroads within said territory, over certain lines or routes designated in said act, certain lands on either side of said lines or routes, as specified in said act of Congress, reference to which is hereby made for greater certainty.

That said act embraced and included the lands hereinafter described and set forth in schedule "A," hereto attached and made part thereof.

4. [4] That by an act of the said territory of Minnesota, approved May 22, 1857, entitled "An act to execute the trust created by an act of Congress, entitled 'An act making a grant of land to the territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said territory, and granting public lands in alternate sections to the state of Alabama, to aid in the construction

of a certain railroad in said state," the said Root River Val-
17 ley and Southern Minnesota Railroad Company was authorized and empowered to survey, locate, construct, complete, and [5] perpetually to have, use, maintain, and operate a railroad with one or more lines or tracks from St Paul and St. Anthony, *via* Minneapolis, to a point of junction at Shakoper City, in the county of Scott, and thence via Belle Plaine, Clarksville, Le Sueur, Traverse des Sioux, St. Peter, Kasota, Mankato, and South Bend, to the southern boundary of the territory of Minnesota, in the direction of the mouth of the Big Sioux River, and granting to said Root River and Southern Minnesota Railroad Company all the lands, interest, rights, powers, and privileges granted to and conferred [6] upon the territory of Minnesota, in and by virtue of the said act of Congress, approved March 3, 1857, which were applicable to the line and road above herein set forth, subject to the provisions in said act of said territory and in said act of Congress set forth.

5. That by an act of the said territory of Minnesota, approved May 3, 1857, entitled "A bill to change the name of the Root River Valley and Southern Minnesota Railroad Company," the cor-
18 porate name of the Root River Valley and Southern Minnesota Railroad Company was changed to that of the Southern Minnesota Railroad Company, and, as was provided therein, by that name should thereafter be known and called in all its corporate acts and doings.

That the said Southern Minnesota Railroad Company was one of the land-grant railroad companies referred to in the amendment of section ten, article nine, of the constitution of the state of Minnesota, and became entitled to and accepted the loan of state credit provided for in and by said section ten, article nine, of the constitution, subject to all the conditions and provisions of said section ten as amended, and subject to all the conditions and provisions of an act of the legislature of [8] the state of Minnesota, entitled "An act concerning land-grant railroads," approved August 12, 1858, and the bonds of the state of Minnesota, to the amount of five hundred and seventy-five thousand dollars, were issued and delivered to the Southern Minnesota Railroad Company, under and in pursuance of and on the terms and conditions specified and provided in the
19 said section of the constitution and in the last cited act of the legislature of the state.

6. That to secure the payment of the principal and interest of the said state bonds so delivered to the said Southern Minnesota Railroad Company, the said [9] company issued and delivered to the state of Minnesota five hundred and seventy-five of its first mortgage bonds of the denomination of one thousand dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-annually, and granted, sold, transferred and assigned unto Benjamin Pringle and Andrew G. Chatfield, as trustees, and to be by them held in trust, the entire railroad of the said Southern Minnesota Railroad Company and all the rights, property, privileges and fran-

chises of said Southern Minnesota Railroad Company, of every kind, which was then owned by said company, or which [10] should thereafter be acquired by it, together with all the rights, title, interest and claims, whether legal or equitable, which the said company then had or possessed, or which it might afterwards acquire in and to any lands granted in said act of Congress, approved March 3, 1857, and under any of the acts of the legislature of the territory of Minnesota, to be by them held in trust, and authorizing said trustees in case the said Southern Minnesota Railroad Company should fail to pay the principal or interest of said state bonds, or of the said first mortgage bonds, as the same became payable, to enter into and upon and take possession of all and singular the premises, property, [11] rights and franchises granted in trust as aforesaid, and to sell and dispose of the same for the payment of the said principal and interest as in said trust deed provided, and to make and deliver to the purchaser or purchasers good and sufficient deeds in fee simple absolute for the same, and out of the moneys arising from such sale to pay the said principal and interest; and in case of the neglect or refusal of said trustees to enter upon and take possession of and sell said property, rights and franchises, then the governor of the state of Minnesota was in and by [12] said trust deed authorized and empowered to do and perform all acts and things necessary and proper to be done in and about such sale and foreclosure for the purpose aforesaid, in as full and complete a manner as said trustees might or could have done; which said deed was duly filed and recorded in the office of the secretary of state and is hereby referred to for greater certainty.

7. That the said Southern Minnesota Railroad Company made default in the payment of the interest due on the state bonds delivered to it as aforesaid, which said interest became due on the first day of June, A. D. 1860, and also made default in the payment of the interest on [13] its said first mortgage bonds, which fell due on the first day of April, A. D. 1860, and said trustees having refused and neglected to foreclose the said trust deed, or sell the said property, lands and franchises, as they were authorized to do as aforesaid, the governor of the state of Minnesota did, as he was duly authorized and required by law to do, on the 16th day of October, A. D. 1860, after having given due and legal notice thereof, sell at public auction, and did bid in and purchase for and in the name of the state all the lands, properties, rights, privileges, and franchises in [14] said deed embraced and contained, and did on the 20th day of October, A. D. 1860, transfer and convey the same to the state of Minnesota by deed of that date duly executed.

8. That the state of Minnesota thereupon and thereby acquired and became possessed and the owner of all and singular the rights, property, privileges, and franchises of every kind, which the said Southern Minnesota Railroad Company had ever owned or possessed, and held the same without merger or extinguishment, and on the 4th day of March, A. D. 1864, the state of Minnesota, by chapter

two of an act approved on that day, entitled "An act to [15] facilitate the construction of the Southern Minnesota Railroad, and to amend and continue certain acts in relation thereto," granted, vested in, and transferred to Horace Thompson, D. W. Ingersoll, S. W. Farnham, Andrew G. Chatfield, Isaac Lincoln, F. A. Donahower, John J. Parker, P. Berkey, H. C. Smith, John L. Merriam, F. R. E. Cornell, E. W. Cutter, Eli B. Ames, J. S. Letford, William Huey, R. B. Laird, and Isaac Marks, their associates and successors, all the rights, immunities, benefits, privileges, franchises, lands, interests, and property of or which had belonged to or been owned by the
23 said Southern Minnesota Railroad Company, appertaining, relating, or applicable to the said line road from St. Paul and from St. Anthony, via Minneapolis, to a point of junction at Shakoper City, in the county of Scott, and thence, via Belle Plaine, Clarksville, LeSueur, Traverse des Sioux, Saint Peter, Kasoba, Mankato, and South Bend, to the southern boundary of the territory, in the direction of the Big Sioux River, which said persons, their associates and successors, were to be known by the name of [17] the Minnesota Valley Railroad Company, and were to exercise all the powers, rights, and privileges appertaining to the road last above described and designated, for the purpose and on terms and conditions in said act of March 4th, 1864, provided. That in and by said act, among other things, it was provided that if at any time the Congress of the United States should grant aid, in lands or otherwise, to aid in the construction of the railroad provided in said chapter two, all such lands or aid so granted to the state were pledged, granted to, [18] and vested in the said Minnesota Valley Railroad Company, reference to which chapter, and all provisions thereof, is made for greater certainty.

9. That on the 16th day of March, A. D. 1864, the said
24 persons named in chapter 2 of said act of March 4th, 1864, under and pursuant to said act, met at St. Paul, Minnesota, and organized as a board of directors of the said Minnesota Valley Railroad Company, and thereupon, on said March 16, 1864, accepted said grant, and the powers and privileges thereby conferred, and entered upon the discharge of their duties as such directors.

10. That the said Minnesota Valley Railroad Company thereupon became entitled to, invested with, and possessed of all the rights, immunities, benefits, privileges, franchises, lands, interests, and property aforesaid, appertaining to the [19] line of road last aforesaid, which the said Southern Minnesota Railroad Company had at any time previous owned, possessed, or been entitled to, under any of the laws of the territory or state of Minnesota, or of the United States, or which the state of Minnesota acquired and held by virtue of any of the proceedings aforesaid.

11. That in the year 1857 the said Southern Minnesota Railroad Company definitely fixed the route of its said road from St.
25 Paul, through the points designated in the said acts of Congress and the territory of Minnesota, [20] to and beyond the

west line of section 31 aforesaid, and did file map thereof, duly authenticated by the proper officers of said company, in the office of the governor of Minnesota, and the same or duplicates thereof, properly certified, were by him forwarded to the Secretary of the Interior and filed in the general land office, where they have ever since remained.

12. That prior to the 5th day of April, A. D. 1859, the said Southern Minnesota Railroad Company did survey and definitely fix and stake out upon the face of the earth its said line of road from range thirty-one, township one hundred and six, to section 19, township [21] one hundred and four, range thirty-nine, and did cause to be made duplicate maps of the same, and the said maps, duly authenticated, were, on or before said last named date, filed in the office of the governor of the state of Minnesota and in the general land office of the United States at Washington, properly endorsed and certified, where they have ever since remained.

That said line of said road was, and was intended by said
26 company as, the definite location of its said route of road by order of the board of directors of said [22] company, and has never been abandoned or changed as such definite location, but has been considered and held to be such definite location of said road ever since said April, 1859, and no other definite location has been made or attempted. That no other or greater variation from said line or definite location has been made in the said line as constructed than was deemed absolutely essential for engineering purposes by the engineer in charge, and so made by him without order of the board of directors of the company plaintiff herein, or of said St. Paul and Sioux City Railroad Company.

13. That by an act of the Congress of the [23] United States approved July 13, 1866, entitled "An act relating to land granted to the state of Minnesota to aid in constructing railroads," the time named in the act granting lands to the territory of Minnesota to aid in the construction of a certain railroad from St. Paul and from St. Anthony, by way of Minneapolis, to a convenient point of junction west
27 of the Mississippi River, to the southern boundary of the territory, approved March 3, 1857, for the construction and completion of said road, should be and was extended for seven years from the passage of said act, to wit, from [24] the 13th day of July, A. D. 1866, reference being had to said act of July 13, 1866, for greater certainty.

14. That by an act of the legislature of the state of Minnesota, approved March 5, 1867, entitled "An act to authorize the Minnesota Railroad Company to construct a branch from Mankato, or some other point near thereto, to the south line of Faribault county," the said Minnesota Valley Railroad Company was authorized to change the name of said company by resolution of its board of directors and adopt any suitable name by which said company might thereafter be [25] known. That thereupon and thereafter the board of directors of said company did, by resolution of said board, adopted

at a meeting thereof, duly called and held, change the name of said company, and did adopt the name of The St. Paul and Sioux City Railroad Company as and for the name of said company.

28 15. That by an act of the legislature of the state of Minnesota, approved March 1st, 1870, entitled "An act relating to the St. Paul and Sioux City Railroad Company," the state of Minnesota approved said new corporate name, so selected by said company as [26] aforesaid, and confirmed all lawful acts of the said company done under said new name, and continued said company by the name so assumed, with all the rights and privileges theretofore or thereafter conferred by law, and repealing all inconsistent acts.

16. That said St. Paul and Sioux City Railroad Company, on or about May 16, 1870, filed with the secretary of state of Minnesota a certificate, signed by its president and secretary, setting forth the said change of name and the acceptance of said company of the provisions of said act.

17. That said St. Paul and Sioux City Railroad Company has constructed, and [27] did within the time and in the manner specified and required by the laws of the United States and of the territory and state of Minnesota, survey and locate, where such survey and location had not been previously made, as stated aforesaid; and

29 constructed and completed as and in the manner hereinafter stated a line of railroad from St. Paul through the county of Scott and the points designated in the third chapter of the acts of the territory of Minnesota, approved March 22d, 1857, to the southern boundary of the state, in [28] the direction of the mouth of the Big Sioux River, and long before the commencement of this action in all respects did comply with and conform to the provisions, conditions and requirements of the several acts of Congress granting lands to aid in the building of its said road. And by the location and construction of its line of railroad as aforesaid it became and was and is entitled to the lands granted by the acts of Congress aforesaid to aid in the building of said line of railroad.

18. That said road was definitely located from St. Paul as far as the west line of range forty aforesaid prior to April 5th, 1859, by the [29] said Southern Minnesota Railroad Company, to whose rights, franchises, and property the St. Paul & Sioux City Railroad Company duly succeeded, as stated herein. That from said west line of said range forty said company definitely fixed the route of said road to the southern boundary of the state of Minnesota on and

30 prior to July, 1866.

That maps of said locations, duly authenticated, were filed in the office of the governor, and the same, or duplicates thereof, duly certified by said governor, were by him forwarded to the general land office at Washington, D. C., and [30] therein filed, and the same have been accepted and used by said office in the adjustment of said land grant and in the certification of lands applicable to said line of road, as indicating and showing the definite location of the whole line of said road designated in said act of Congress of March 3d,

believes, but how many or with whom or at what prices plaintiff does not know, but prays that said defendant may discover.

24. That demand has been made of defendant that he convey to this plaintiff said lands, but said defendant refuses to convey
36 the same, and refuses to acknowledge the right or title of this plaintiff thereto.

25. That the governor was, by the laws of this state, authorized to deed and convey to the parties entitled thereto certain swamp lands covered by the act of March 7, 1862, aforesaid [42], and, as plaintiff is informed and believes, executed said deed dated December 31, 1873, to defendant in pursuance of said authority, and said deed, which has been duly recorded in the office of the register of deeds of said Cottonwood county and embraces other lands than those in controversy herein, is a cloud upon the plaintiff's title; that said plaintiff holds its lands for sale to those who purchase to settle thereon, and in tracts corresponding to the smaller government subdivision to one purchaser, and said deed to said defendant, if not set [43] aside and adjudged void as to the lands in schedule "A" described, would cause a vexatious litigation and would prevent sale.

26. Wherefore the plaintiff prays judgment that the plaintiff is entitled to each and every tract and parcel of the lands de-
37 scribed in said schedule "A" hereto attached, and transferring the title of such lands to it; that the defendant, Daniel Rice, has no right to interest in or claim against or lien on any of the said lands, and that he transfer each and every tract of such lands to the plaintiff, except such as he has sold to *bona fide* purchasers, and that he make a true and full statement of the pieces or parcels of such land which he [44] has sold, and the description thereof and the price for which each piece or parcel was sold, and that he account for and pay to the plaintiff such purchase price and interest thereon from the date of sale, and that the decree of this court adjudging the said lands the property of the plaintiff and transferring the title thereof to the plaintiff may be recorded in the office of the register of deeds of the county where such lands lie and for such other and further relief as may be just and equitable.

E. C. PALMER,
Attorney for Plaintiff.

38 *Schedule "A."*

The southwest quarter of the southwest quarter of section twenty-one (21), township one hundred and six (106), range thirty-five (35), containing forty acres.

The southwest quarter of the southeast quarter and the northwest quarter of the northeast quarter of section twenty-seven (27), containing eighty acres. The northeast quarter of the northeast quarter of section twenty-nine (29), containing forty acres. The southeast quarter of the southeast quarter of section thirty-three, containing forty

acres, all in township one hundred and six (106), range thirty-five (35).

Also the northwest quarter of the northwest quarter, containing forty acres. The southwest quarter of the northwest quarter. The northwest quarter of the southwest quarter. The southwest quarter of the southwest quarter of section nineteen (19), containing one hundred twenty-one & 64-140 acres. The northeast quarter of the southwest quarter of section twenty-three (23), containing forty acres. The northwest quarter of the northeast quarter of section thirty-five (35), containing forty acres, all in township one hundred and six (106), range thirty-six (36).

Also the south half of the southwest quarter of section one (1), containing eighty acres. The west half of the northeast quar-
39 ter and the west half of the southeast quarter of section thirteen (13), containing 160 acres. The north half of the northeast quarter and the west half of the southeast quarter of section twenty-five (25), containing 160 acres. The southwest quarter of the southwest quarter of section twenty-nine (29), containing forty acres, all in township one hundred and six (106), range thirty-seven (37).

40 STATE OF MINNESOTA, } *ss.*
County of Ramsey, }

E. F. Drake came before me personally, and, being duly sworn, doth say that he is president of the Sioux City and St. Paul Railroad Company, plaintiff in the above entitled action; that the foregoing complaint is true of his own knowledge, except as to those matters stated on his information and belief, and as to those matters that he believes it to be true.

E. F. DRAKE.

Subscribed and sworn to before me on this 26th day of December, A. D. 1879.

G. H. HAMILTON,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) District Court sixth judicial district, county of Cottonwood; The Sioux City & St. Paul Railroad Company against Daniel Rice; copy complaint and summons and verification by party; filed the 24th day of April, A. D. 1880; Orrin Nason, clerk of District Court; E. C. Palmer, plff's attorney, St. Paul, Minn.

41 I, Orrin Nason, clerk of the District Court in and for the county of Cottonwood and state of Minnesota, do hereby certify that the foregoing is a true and correct copy of summons, complaint, and verification by party in case of The Sioux City and St. Paul Railroad Company against Daniel Rice, now on file in my office.

Given under my hand and official seal at Windom, April 30, A. D. 1880.

[SEAL OF DIST. COURT COTTONWOOD CO.] ORRIN NASON,
Clerk of District Court.

(Endorsed:) Filed June 21, 1880; H. E. Mann, clerk.

42 STATE OF MINNESOTA, }
County of Cottonwood. }

District Court, 6th judicial district.

THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY, plaintiff, }
vs. }
DANIEL RICE, defendant. }

The defendant in the above-entitled action, for answer to the complaint of the plaintiff therein, denies that the act of Congress, entitled and referred to in folio 2 of the plaintiff's said complaint, embraced, included or granted to the plaintiff or any other party the lands described and set forth in schedule "A." attached to the plaintiff's said complaint, or any part or portion of the same, as alleged in said complaint or otherwise, and avers that the Congress in and by the said act making said grant did reserve therefrom all lands theretofore reserved to the United States by any act of Congress or in any manner by competent authority for any purpose whatever.

2. And the defendant, further answering, denies that the said Southern Minnesota Railroad Company definitely fixed the route of its railroad from Saint Paul through the points designated in said acts of Congress in the territory of Minnesota to or beyond the west line of section 31 aforesaid, as alleged in the plaintiff's com-
43 plaint herein, prior to February 5th, 1859, or prior to the 12th day of March, A. D. 1865, and the defendant avers that he has no knowledge or information sufficient to form a belief as to the allegation and averments of the plaintiff in its said complaint herein contained in folios 19, 20, 21, and 22 of the plaintiff's said complaint, and demands that the plaintiff be required to make strict and full proof of the same.

3. And the defendant denies the allegations of the plaintiff contained in its said complaint herein in folios 27, 28, 29, 30, 31, and 32, and each and every part thereof as the same are therein alleged or otherwise.

And the defendant, further answering, denies that by reason of the premises, or upon any other grounds or for any other reasons, the Sioux City and Saint Paul Railroad Company is entitled to the lands in controversy herein, or any part or portion thereof, as the same appears in schedule A or otherwise, and the defendant denies that the said lands or any portion of the same were granted by the United States to aid in building said line of road to the territory or state of

Minnesota, and avers that the same were granted, selected,
44 set apart, and certified to the state of Minnesota as a portion of the lands granted by Congress to said state under and by virtue of an act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits, passed by the Congress of the United States on the 28th day of September, 1850, and an act to extend the provisions of an [4] act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits to Minnesota and Oregon, and for other purposes, passed by the Congress of the United States and approved March 12, 1862.

And the defendant, further answering, avers that the honorable Secretary of the Department of the Interior of the United States did make out an accurate list and plat of the lands so granted to the state of Minnesota in and by the acts last aforesaid, and did transmit the same to the governor of the state of Minnesota, of all the lands described in said schedule A, with other lands, and the said governor did, thereupon, to wit, on the day of , A. D. 1862, request the said honorable Secretary of the Interior to cause patents for said lands and all the lands included in said list to be patented [5] to said state of Minnesota under the said swamp-land acts, so called, and for the purposes so specified in said act of September 28, 1850, and the said act of March 12, 1862, supplemental thereto. Said lands
45 were thereupon patented to said state of Minnesota under the provision of the acts aforesaid, as provided by law; and the defendant avers that all said lands in said schedule described in equity belonged to the future state of Minnesota from and after the passage of said act of Congress on the 28th day of September, A. D. 1850, and were reserved by and to the United States, and never became a part of nor passed under said act of March 3d, 1857, nor any of the acts amendatory thereof or supplementary thereto, and avers that the governor of Minnesota could and did by virtue of the premises and the acts of the legislature of the state of Minnesota, in said complaint specified, rightfully and lawfully [6] convey said lands and all the same to this defendant; and the defendant avers that he is the owner of the same in fee-simple absolute, free and clear from all equities and claims in favor of the plaintiff.

And the defendant, further answering avers that before said lands were conveyed to him by the said governor of Minnesota, the said governor had found and determined and become satisfied, after a proper inspection of said road by a competent agent appointed by himself, that the work required by the provisions of said act had been faithfully performed, and avers that all said lands, including the
46 lands in said schedule A, had been selected, and said road had been located and constructed at the time and in the manner provided in said act of the legislature of Minnesota, approved March 2, 1862, and that all the terms and conditions of said act had been complied with prior to the conveyance of said lands by the state to this defendant, and prior to the location of plaintiff's said line of

road, which is not within six miles of the lands in controversy in township one hundred and six (106) of range thirty-seven (37).

Wherefore the defendant prays that the plaintiff take nothing by this action and for his costs.

JOHN B. & W. H. SANBORN,
Defendant's Attorneys.

STATE OF MINNESOTA, } ss.
County of Ramsey, }

Daniel Rice, being first duly sworn, deposes and says that he is the defendant in the action above entitled; that the foregoing answer is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters that he believes it to be true.

DANIEL RICE.

Subscribed and sworn to before me this 23d day of February, A. D. 1880.

EDWARD P. SANBORN,
[NOTARIAL SEAL.] *Notary Public, Minn.*

47 (Endorsed:) District Court Cottonwood county; The Sioux City & St. Paul Railroad Company *v.* Daniel Rice; answer; due service of the within answer by copy this 28th day of February, A. D. 1880, is hereby admitted; E. C. Palmer, pl'ff's att'y.

I, Orrin Nason, clerk of District Court in and for the county of Cottonwood and state of Minnesota, do hereby certify that the foregoing attached is a true and correct copy of answer to complainant in case of The Sioux City & St. Paul Railroad Company against Daniel Rice, which is now on file in my office.

Given under my hand and official seal, at Windom, April 30, 1880.

ORRIN NASON,
[SEAL OF COURT.] *Clerk of District Court.*

48 District Court, sixth judicial district.

STATE OF MINNESOTA, }
County of Cottonwood. }

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY }
against }
DANIEL RICE. }

The plaintiff, for reply to the new matter alleged in the answer in the above-entitled action, denies that the said lands in the said complaint described, or any part or portion thereof, were granted, selected, or set apart to the state of Minnesota as a portion of the lands granted by Congress to said state under and by virtue of the act of

Sept. 28, 1850, as referred to in folio 4 of said answer, or of the act of March 12, 1860, in said folio 4 referred to, and it denies that the Secretary of the Interior ever made and transmitted to the governor of Minnesota an accurate list or plat of the lands granted by said acts of Congress, or either of them, and as to whether patents for said lands have been issued to the state of Minnesota this plaintiff has no knowledge or information sufficient to form a belief; but plaintiff denies that said lands, or any part or portion thereof, equitably or otherwise belonged to the future state of Minnesota from or after the passage of the act of Sept. 28, 1850, or were reserved by or to the United States, or could not pass under the act of March
49 3, 1857, for the benefit of plaintiff's said line of road.

And plaintiff denies that said act of March 12, 1860, was supplemental to said act of Sept. 28, 1850, but avers that it was a distinct and independent act, and the only act of Congress by or under which any swamp lands were granted to the state of Minnesota, and which are in contest in this suit, and plaintiff craves leave to refer to the provisions of said act of March 12, 1860, as if placed at length herein.

And plaintiff avers that each and every act of the Secretary of the Interior, whether done in certifying or patenting said lands to the state of Minnesota under the act of Congress of Sept. 28, 1850, (if such there be,) was done mistakenly, improperly, and wrongfully, and without authority or warrant in the law.

And as to whether the governor of the state of Minnesota at any time found or determined, or became satisfied by or through any inspection of said road by agent or otherwise, that the provisions of said act of the legislature of the state of Minnesota, approved March 2, 1862, had been complied with, or that the work required by said act had been performed, this plaintiff has no knowledge or information sufficient to form a belief, but avers that if said governor did so find, determine, or become satisfied, he must have done so
50 upon very slight grounds, the fact being that very little work was done on the line of said road, and that said pretended road was not convenient or safe for the transit of stage coaches as required by said act.

Said plaintiff denies each and every allegation of new matter contained in said answer, and each and every portion thereof, and demands judgment as in its said complaint it has demanded.

E. C. PALMER,
Plaintiff's Attorney.

STATE OF MINNESOTA, } *ss.*
County of Ramsey, }

E. F. Drake came before me personally, and, being duly sworn, doth say that he is president of the Sioux City and Saint Paul Railroad Company, plaintiff in the above entitled action; that the foregoing pleading is true of his own knowledge, except as to the mat-

ters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

E. F. DRAKE.

Subscribed and sworn to before me this 13th day of March, A. D. 1880.

[SEAL.] D. ELWELL,
Notary Public.

51 (Endorsed:) Reply; title filed in my office April 24, 1880; Orrin Nason, clerk of Dis't Court.

I, Orrin Nason, clerk District Court in and for the county of Cottonwood and state of Minnesota, do hereby certify that the foregoing attached is a true and correct copy of the copy of reply in the case of the Sioux City & St. Paul Railroad Company now on file in my office.

Given under my hand and official seal, at Windom, this 30th day of April, A. D. 1880.

[SEAL OF COURT.] ORRIN NASON,
Clerk of Dis't Court.

52 STATE OF MINNESOTA, *County of Cottonwood*, } *ss.*

District Court, sixth judicial district.

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, pl'ff,
vs.
DANIEL RICE, defendant.

STATE OF MINNESOTA, *County of Ramsey*, } *ss.*

Edward P. Sanborn, being first duly sworn, deposes and says that he is one of the defendant's attorneys in the action above entitled; that at Luverne, in the county of Rock and state of Minnesota, on the 8th day of April, A. D. 1880, he presented to his honor, D. A. Dickenson, judge of the court above named, the bond and petition which are hereto attached, and moved that said bond be approved and that said cause be removed into the next Circuit Court of the United States, to be held in the city of Saint Paul, in the district of Minnesota, in the eighth circuit, as prayed in said petition.

That said D. A. Dickenson, judge of said court first above referred to, then and there refused to grant an order removing said
53 cause to the Circuit Court aforesaid, solely on the ground and for the reason that said matter was not brought before the court upon an order to show cause or notice of motion duly served upon the plaintiff's attorney.

EDWARD P. SANBORN.

Subscribed and sworn to before me this 22d day of April, A. D. 1880.

[NOTARIAL SEAL.] WALTER H. SANBORN,
Notary Public, Minn.

STATE OF MINNESOTA, }
County of Cottonwood. }

District Court, sixth judicial district.

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY, plaintiff, }
vs.
DANIEL RICE, defendant. }

And now comes Daniel Rice, the defendant in the action above entitled, and respectfully represents and shows to the honorable court—

That said action was commenced in the District Court for Cottonwood county, in the sixth judicial district and state of Minnesota, by the said The Sioux City and St. Paul Railroad Company against your petitioner, Daniel Rice, on the 29th day of December, A. D. 1879, and that said suit is now pending for trial in said court.

54 That said suit involves the title to certain lands in the state of Minnesota, and some of which are situated in said Cottonwood county, and said cause of action, if any exists, and the defense thereto arise under and depend upon the laws of the United States, and said controversy involves the construction of certain acts of Congress, and the grants thereby made, to wit, that certain act of Congress entitled "An act making a grant of land to the territory of Minnesota in alternate sections to aid in the construction of certain railroads in said territory, and granting public lands in alternate sections to the state of Alabama to aid in the construction of a certain railroad in said state," approved March 3, 1857; and that certain act of Congress entitled "An act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits," passed by the Congress of the United States on the 28th day of September, 1850; and a certain act of Congress entitled "An act to extend the provisions of an act to enable the states of Arkansas and other states to reclaim the swamp lands within their limits to Minnesota and Oregon, and for other purposes," approved March 12, 1862.

And your petitioner further represents that said lands in controversy were thereafter duly patented to the state of Minnesota under the said swamp-land acts, so called, aforesaid, for the purposes specified in said act of September 28th, 1850, and the said act of March 12th, 1862, supplemental thereto. And it is claimed by your petitioner that said lands in controversy belonged to the future

55 state of Minnesota from and after the passage of said act of Congress on the 28th day of September, A. D. 1850, and were reserved by and to the United States, and never passed under said

act of March 3d, 1857, nor any of the acts amendatory thereof or supplemental thereto, and that the governor of the state of Minnesota could and did, by virtue of the premises and the acts of the legislature of the state of Minnesota, rightfully and lawfully convey said lands to the defendant, your petitioner.

And your petitioner further respectfully represents that no term of said District Court has been held since the commencement of this action, and that your petitioner desires to remove said suit before the trial thereof into the next Circuit Court of the United States, to be held in the city of Saint Paul, in the district of Minnesota, in the eighth circuit, in pursuance of the provisions of the act of Congress in such cases provided.

And your petitioner represents that he is ready and willing to give such good and sufficient surety as this court may direct, for the doing all acts and things required to be done by said provisions of law upon the removal of a suit from a state court into the United States Circuit Court, and herewith offers his bond, executed and conditioned as by law provided.

56 And your petitioner therefore prays that the said bond may be accepted as good and sufficient surety, according to said provisions of law, and that said suit may be removed into the next Circuit Court of the United States, to be held in the city of St. Paul, in said district of Minnesota, in the eighth circuit, pursuant to the laws of the United States in such case provided, and that no further proceedings may be had therein in this court.

And your petitioner will always pray.

DANIEL RICE.

STATE OF MINNESOTA, } ss.
County of Ramsey, }

Daniel Rice, being first duly sworn, deposes and says that he is the petitioner above named; that the foregoing petition is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters that he believes it to be true.

DANIEL RICE.

Subscribed and sworn to before me this 30th day of March, A. D. 1880.

[NOTARIAL SEAL] EDWARD P. SANBORN,
Notary Public, Minn.

57 Know all men by these presents, that Daniel Rice, as principal, and Daniel R. Noyes, Edw'd H. Cutler, as sureties, are held and firmly bound unto the Sioux City and Saint Paul Railroad Company in the sum of one thousand dollars lawful money of the United States of America, to be paid to the said Sioux City and Saint Paul Railroad Company, its successors or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 30th day of March, one thousand eight hundred and eighty.

The condition of the above obligation is such: Whereas a suit was commenced on or about the 29th day of December, A. D. 1879, in the District Court, sixth judicial district, county of Cottonwood and state of Minnesota, by the said the Sioux City and Saint Paul Railroad Company against Daniel Rice, is now pending in said court, and is removable into the Circuit Court of the United States for the district of Minnesota, under the acts of Congress providing for the removal of causes from state courts; and whereas the petition of Daniel Rice has been filed for the removal of said suit into the next Circuit Court of the United States to be held at Saint Paul, in the district of Minnesota:

58 Now, therefore, if the above bounden Daniel Rice, his heirs, executors, administrators or assigns, shall enter or cause to be entered in the Circuit Court of the United States for the district of Minnesota, on the first day of its stated session next ensuing after the order of the said District Court of the sixth judicial district, county of Cottonwood, in the state of Minnesota, for the removal of said suit into the said Circuit Court, copies of all process, pleadings, depositions, testimony and other proceedings in said suit, and do or cause to be done such other appropriate acts as by the laws of the United States are required to be done upon the removal of a suit into the Circuit Court of the United States, then the above obligation to be void; otherwise to remain in full force and virtue.

DANIEL RICE. [SEAL.]
DAN R. NOYES. [SEAL.]
EDW. H. CUTLER. [SEAL.]

Sealed and delivered in presence of—
J. W. L. COWING.
JAMES MORRISON.

STATE OF MINNESOTA, } ss.
County of Ramsey, }

Daniel Rice, Dan'l R. Noyes and Edw. H. Cutler came personally before me on this 30th day of March, A. D. 1880, to me well known to be the same persons who executed the foregoing bond, and each acknowledged the same to be his own free act and deed.

[NOTARIAL SEAL.] J. W. L. COWING,
Notary Public, Ramsey Co., Minn.

59 STATE OF MINNESOTA, } ss.
County of Ramsey, }

Dan'l R. Noyes and Edw. H. Cutler, being first duly sworn, doth say eay each for himself that he is the same person as the surety above named, and is a resident and freeholder of and in the county of Ramsey, state of Minnesota, and worth the sum of two thousand

dollars above his debts and liabilities, and exclusive of his property exempt from execution.

DAN'L R. NOYES.
EDW. H. CUTLER.

Subscribed and sworn to before me this 30th day of March, A. D. 1880.

[NOTARIAL SEAL.] J. W. L. COWING,
Notary Public, Ramsey Co., Minn.

(Endorsed:) Filed in my office April 24, 1880. Orrin Nason, clerk of District Court.

I, Orrin Nason, clerk of the District Court in and for the county of Cottonwood and state of Minnesota, do hereby certify that the foregoing attached is a true and correct copy of petition for removal of suit to Circuit Court of United States, and of general bond also, now on file in my office.

Given under my hand and official seal, at Windom, this 30th day of April, A. D. 1880.

[SEAL OF COURT.] ORRIN NASON,
Clerk of District Court.

(Endorsed:) Filed June 21, 1880. H. E. Mann, clerk.

60 District Court, sixth judicial district.

STATE OF MINNESOTA, }
County of Cottonwood. }

Transferred by the defendant to the Circuit Court of the United States for the district of Minnesota.

THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY }
vs. }
DANIEL RICE. }

It is hereby stipulated by and between the parties in the above-entitled action that the following statements, exhibits, and the contents thereof shall be taken and considered as facts in said cause and have the same force and effect as if found as facts by the court on the hearing and decision of said cause, to wit:

1. That said plaintiff became and is a corporation as alleged in said bill of complaint.

2. That each of the acts and laws of the state of Minnesota and of the Congress of the United States referred to and designated in said bill of complaint was duly passed and became laws at the respective dates of approval thereof, and shall be regarded as proved herein in the words and figures appearing in the published laws of said state and of the United States.

3. That each of the allegations of fact contained in folios 19, 20,

21, & 22 of said bill of complaint shall be considered as
61 proved, and be taken and held to be true as alleged.

4. That each of the allegations of fact contained in folios 27, 28, 29, 30, 31, and 32 of said bill of complaint shall be considered as proved, and be taken and held to be true as alleged.

5. That the said line of railroad set forth in the act of Congress of March 3, 1857, and referred to in said bill of complaint, was definitely located from St. Paul, Minn., through the points required, along and past the lands in controversy herein, as early as April, 1859, and said line of definite location is shown on the map hereto attached (marked Exhibit "A" and made a part hereof) in red color; that all the lands in controversy herein lie within six miles of said line and within the six miles limits of said grant, as fixed by the land department of the United States upon the definite location of said road as aforesaid, and no other six miles limits have ever been fixed or designated by said department; that prior to the year 1871 said corporation constructed its line of road as shown on said map (Exhibit "A") and thereafter operated the same as a first-class railroad.

6. That the state of Minnesota, in the year 1857, duly elected to take and selected for indemnity the odd-numbered sections within the 15 miles limits which then bounded the grant.

7. That said Sioux City and St. Paul Railroad Company, plaintiff herein, claims the land in controversy herein, and which are
62 set forth and described in the list or schedule attached to said bill of complaint under the act of March 3, 1857, referred to in folio 3 of said bill, and the acts of the legislature of Minnesota referred to in said bill, and by reason of the location and construction of said line of road.

8. That the defendant, Daniel Rice, claims said lands under the act of Congress of the United States approved Sept. 20, 1850, and the act approved March 12, 1862, referred to in folio 4 of the answer herein, and by reason of the facts alleged in folios 5 & 6 of said answer.

9. That each of the acts of Congress of the United States set forth and designated in said answer were duly passed and became laws at the respective dates of approval thereof, and shall be regarded as proved herein in the words and figures appearing in the published laws of the United States.

10. That the Secretary of the Interior certified the lands in controversy herein (with other lands) to the state of Minnesota as lands inuring to said state under said act of Congress of Sept. 28, 1850, and the governor of said state did thereafter and on the 31st day of December, 1873, execute a deed of said lands to the defendant herein, and said defendant now holds said lands by virtue thereof. That said deed was so executed and delivered by the governor of said state upon his being satisfied that the road referred to in folio 6 of said answer had been built, as required by the act approved

63 March 2, 1862, in said folio 6 designated, and that it was his official duty to make said conveyance.

11. Each of the allegations of fact contained in the bill of complaint herein not denied by the answer herein, and each of the allegations of the answer herein of new matter of fact not denied by the reply, shall be taken and held to be true.

12. For the purposes of this suit it is admitted that the plaintiff herein, or the defendant herein, is the owner of the lands in controversy herein, which are of the value of at least six thousand dollars.

13. Nothing herein contained shall be construed as an admission that the lands in controversy herein, or any of the same, were granted or intended to be granted by the said act of Congress of March 3, 1857, or by the said act of Congress of Sept. 28, 1850, or by the said act of Congress of March 12, 1862, or by said two last-named acts considered as an act, or as touching the same subject-matter; but it is expressly understood that the contention is, as matter of law, which of said acts embraced and included said lands under all the herein stipulated and admitted facts.

E. C. PALMER,
Solicitor for Complainant.

JOHN B. & W. H. SANBORN,
Solicitors for Defendant.

(Endorsed:) Stipulation of facts. Filed June 29, 1881. H. E. Mann, clerk.

[Here follows map marked page 63.]

64 United States Circuit Court for the district of Minnesota.

Term minutes, December term, A. D. 1880, December 18, 1880. Present: Hons. George W. McCrary, Rensselaer R. Nelson, judges.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY
vs.
DANIEL RICE.

This cause is submitted to the court by the solicitors of the respective parties upon an agreed statement of facts and printed briefs, to be furnished to the court on or before February 15, 1881.

United States Circuit Court for the district of Minnesota.

Term minutes, June term, A. D. 1880, June 29, 1880. Present: Hons. George W. McCrary, Rensselaer R. Nelson, judges.

THE SIOUX CITY & SAINT PAUL RAILROAD COMPANY
vs.
DANIEL RICE.

This cause coming on to be heard, the same was argued on the part of the plaintiff by E. C. Palmer, esq., its solicitor, and on the

part of the defendant by John B. Sanborn, esq., his solicitor, and was submitted to the court and taken under advisement.

65 United States Circuit Court for the district of Minnesota.

Term minutes, June term, A. D. 1881, July 5, A. D. 1881. Present: Hon. Rensselaer R. Nelson, judge.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY
vs.
DANIEL RICE.

This cause having been heretofore argued and submitted and taken under advisement, now, the court being fully advised in the premises, and having filed its written opinion and decision therein, it is ordered that a decree for the plaintiff be entered pursuant thereto.

U. S. Circuit Court, Minn. dist., June term, 1881.

THE SIOUX CITY & ST. PAUL RAILROAD CO.
vs.
DANIEL RICE.

E. C. Palmer, for comp't; J. B. Sanborn, for def't.

PER CURIAM.—This suit is instituted to establish the superior right of the complainants to the land in controversy. The equitable title is claimed to be in the complainant and the legal title in the defendant.

66 The defendant's title is derived from the state of Minnesota by conveyance, under the authority of an act of the legislature, the land being described as swamp, and certified to the state as swamp lands belonging to it by virtue of the acts of Congress approved September 28, 1850, and March 12, 1860.

The complainant's title is claimed to be vested under the act of Congress passed March 3d, 1857, granting lands to the territory or future state of Minnesota, to aid in the construction of railroads, and subsequent acts disposing of those lands for that purpose passed by the legislature of the state March 8, 1861, and March 4, 1864.

Conclusions.

I. The state of Minnesota was admitted into the Union May 11, 1858, and the title under the swamp-land act did not take effect until the date of the act of admission.

II. The title to the land in controversy was in the United States at the time of the passage of the act granting lands to the territory or future state of Minnesota for the construction of railroads, approved March 3, 1857, and there is nothing in the act of Congress of Sept. 28, 1850, which prevented Congress from granting this land for that purpose.

III. This land was not reserved out of that grant by any of the provisions embraced in the act of March 3d, 1857, but is located

within the limits prescribed therein, and inured to the complainant's benefit, and the title became vested in it by virtue of the acts
67 of the legislature of the state of Minnesota approved March 8, 1861, and March 4, 1864.

The complainant is, therefore, entitled to a decree, and it is so ordered.

United States Circuit Court for the district of Minnesota.

Term minutes June term, A. D. 1881, July 11, 1881.

THE SIOUX CITY & ST. PAUL RAILROAD COMPANY
vs.
DANIEL RICE.

At a stated term of the Circuit Court of the United States of America for the district of Minnesota, in the eighth circuit, held in the city of Saint Paul on the twenty-first day of June, in the year of our Lord one thousand eight hundred and eighty-one. Present: The Honorable George W. McCrary, circuit judge, and Honorable Rensselaer R. Nelson, district judge.

The cause having come on to be heard upon the bill of complaint herein, the answer thereto of the defendant, Daniel Rice, the replication of the complainant to said answer, and the proof—oral, documentary, and written—taken, made, stipulated, and filed in said cause, and having been argued by counsel for the respective parties—

Now, therefore, on consideration thereof, it is ordered, ad-
68 judged, and decreed, and the court doth hereby order, adjudge, and decree as follows, viz:

That the said complainant, the Sioux City and Saint Paul Railroad Company, is the owner in fee-simple of the following described lands, situate in the state of Minnesota, being all the lands described in schedule "A," attached to the bill of complaint in this cause, to-wit: The southwest quarter of the southwest quarter of section twenty-one (21), in township one hundred and six (106), range thirty-five (35), containing forty (40) acres. The southwest quarter of the southeast quarter and the northwest quarter of the northeast quarter of section twenty-seven (27), containing eighty (80) acres. The northeast quarter of the northeast quarter of section twenty-nine (29), containing forty acres (40). The southeast quarter of the southeast quarter of section thirty-three (33), containing forty (40) acres, all in township one hundred and six (106), range thirty-five (35).

Also the northwest quarter of the northwest quarter, containing forty (40) acres. The southwest quarter of the northwest quarter. The northwest quarter of the southwest quarter. The southwest quarter of the southwest quarter of section nineteen, containing one hundred and twenty-one and 64-100 acres. The northeast quarter of the southwest quarter of section twenty-three (23), containing forty (40) acres. The northwest quarter of the northeast quarter of

section thirty-five (35), containing forty (40) acres, all in township one hundred and six (106), range thirty-six (36).

Also the south half of the southwest quarter of section one (1), containing eighty (80) acres. The west half of the north-
69 east quarter and the west half of the southeast quarter of section thirteen (13), containing one hundred and sixty (160) acres. The north half of the northeast quarter and the west half of the southeast quarter of section twenty-five (25), containing one hundred and sixty acres. The southwest quarter of the southwest quarter of section twenty-nine (29), containing forty (40) acres, all in township one hundred and six (106), range thirty-seven (37).

That the defendant Daniel Rice has no right, title, interest or estate in or to any of the lands aforesaid, and the conveyance from the state of Minnesota to him, the said Daniel Rice, purporting to convey the legal title thereto of the said lands, is a cloud upon the title aforesaid of the said plaintiff, and is hereby adjudged to be void and of no effect, and is hereby set aside, and said defendant is hereby decreed to convey said legal title to said lands to said plaintiff, its successors and assigns.

And in default of said Rice in making said conveyance this decree shall and may be recorded in the office of the register of deeds within and for the several counties in which any of said land may be situated, and be effectual to vest said title to said lands and every part of the same in said plaintiff, the Sioux City and St. Paul Railroad Company, its successors and assigns.

And it is further ordered, adjudged, and decreed that said plaintiff recover of said defendant its costs and disbursements in this action, to be taxed by the clerk of this court on proper notice and applica-
tion, and to be inserted in this judgment upon and after such
70 taxation, and in default of the payment thereof that said plaintiff have execution therefor.

Said costs and disbursements as taxed amount to the sum of.....

R. R. NELSON,
Judge.

(Endorsed:) Decree; filed July 11, 1881; H. E. Mann, clerk; ent. T. M. E., 241, &c.

71 United States of America.

CIRCUIT COURT OF THE UNITED STATES, } *ss.*
District of Minnesota, }

I, H. E. Mann, clerk of said Circuit Court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 70 pages, numbered consecutively from 1 to 70 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause, and of the whole thereof, as appears from the

original records and files of said court; and I do further certify and return that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth year.

[SEAL.] H. E. MANN,
Clerk.

(Endorsed on cover:) Minnesota; C. C. U. S.; No. 834; Daniel Rice, appellant, *vs.* The Sioux City & St. Paul Railroad Company; filed 26th February, 1883.

110-695

FILED
JAN 7 1884
W. H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1883.

DANIEL RICE,
Appellant.

v.

THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY,
Appellee.

No. 834.

SUBMITTED ON BRIEFS UNDER THE TWENTIETH RULE.

JOHN B. SANBORN,
Counsel for Appellant.

JOHN B. & W. H. SANBORN,
Attorneys for Appellant.

PIONEER PRESS CO., PRINTERS, STATIONERS AND LEGAL BLANKS, ST. PAUL, MINN.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

DANIEL RICE,
Appellant.

v.

THE SIOUX CITY AND SAINT PAUL RAILROAD COMPANY,
Appellee.

No. 834.

SUBMITTED ON BRIEFS UNDER THE TWENTIETH RULE.

Has the swamp land grant of September 28, 1850, any force in Minnesota as against the grant of March 3, 1857, in aid of railroads in said state — the state having been admitted into the Union, May 11, 1858, and all the laws of the United States, not locally inapplicable, applied and extended to said state by said act of admission, and the railroad company having definitely located its line adjacent to the lands in controversy in April, 1859, and congress extended the swamp land act of 1850 to Minnesota and Oregon by an act in 1860, and the secretary of the interior having selected and certified the lands in controversy to the state of Minnesota, under the swamp land act of 1850, and the state having sold the same, and the title having vested in the appellant?

On the stipulations of facts the map referred to in the record has no signification or importance, and is purposely omitted.

This action was originally brought by the appellee in the district court of the sixth judicial district and state of Minnesota against the appellant. It was in the nature of a suit in equity for a decree to divest the legal title of the lands described in the complaint from the defendant, and vest them in the plaintiff, whereas the plaintiff claimed the equitable title rested.

The plaintiff below claimed, that by virtue of the act of congress, approved March 3, 1857, entitled: "An act mak-"ing a grant of lands to the territory of Minnesota in alter-"nate sections, to aid in the construction of certain railroads "in said territory, and granting public lands in alternate sec-"tions in the state of Alabama, to aid in the construction of "a certain railroad in that state," the United States granted to the territory of Minnesota to aid in the construction of railroads within said territory, the lands described in the complaint, and that, by virtue of certain acts of the territory of Minnesota, the plaintiff had become vested with all the rights to said land that were granted by congress in and by the act aforesaid, for the purposes aforesaid.

The defendant answered, and in substance admitted, that the acts of congress and acts of the legislature had been passed as alleged, but denied that the land described was included in said grants, and averred that said lands were granted, selected and set apart, and certified to the state of Minnesota as a portion of the lands granted by congress to said state, under and by virtue of an act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits, passed by congress September 28, 1850, and an act extending the provisions of said act to Minnesota and

Oregon, passed March 12, 1860; and that the honorable secretary of the interior had patented said lands to Minnesota, under and by virtue of the last named acts; and that by virtue of certain acts of the legislature of Minnesota, and of the executive department of said state, said title so granted and patented to said state was vested in the defendant, who thereby became, and was the owner in fee-simple.

The reply and stipulation upon the facts entered into by and between the parties admits such legislation and acts as would vest the title in law and equity in the defendant if said lands fall under, and are included in the grant to the states as swamp lands, and by said stipulation the defendant appellant admits such a state of facts as will give to the railroad company appellee the right to the title to said lands, if they fall under and are included in the grant to the territory of Minnesota, for the purpose of aiding in the construction of said road. So the naked question of law presented to the court is, under what act of congress, and for what purpose, were said lands granted to the territory and future state of Minnesota? if for railroad purposes under the act of 1857, the right to the title is in the railroad company; if for purposes of reclaiming swamp lands under the acts pertaining thereto, then the title is rightfully and lawfully in the appellant.

The acts of congress upon which this question turns are as follows, viz.:

"That to enable the state of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands, therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same hereby are granted to said state.

SEC. 2. That it shall be the duty of the secretary of the

interior, as soon as may be practicable after the passage of this act, to make out an accurate list, and plats of the lands described as aforesaid, and transmit the same to the governor of the state of Arkansas, and, at the request of said governor, cause a patent to be issued to the state therefor; and on that patent the fee-simple to said lands shall vest in the state of Arkansas subject to the disposal of the legislature thereof. Provided, however, that the proceeds of said lands, whether from sale or direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

SEC. 4. That the provisions of this act be extended to, and their benefits be conferred *upon each of the other states of the Union* in which such swamp and overflowed lands known or designated as aforesaid may be situated."

Approved September 28, 1850.

Nine Statutes at Large, 519, 520.

"That the provisions of the act of congress entitled, an act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits, approved September 28, 1850, be, and the same are hereby extended to the states of Minnesota and Oregon, Provided, that the grant hereby made shall not include any lands which the government of the United States may have received, sold, or disposed of (in pursuance of any law heretofore enacted) prior to the confirmation of title to be made under the authority of the said act.

SEC. 2. That the selection to be made from lands already surveyed in each of the states, including Minnesota and Oregon, under the authority of the act aforesaid, and of the act to aid the state of Louisiana in draining the swamp lands therein, approved March 2, 1849, shall be made within two years from the adjournment of the legislature of each state, at its next session after the date of this act; and as to all lands hereafter to be surveyed within two years from such adjournment, at the next session after notice by the secretary of the interior to the governor of the state, that the survey has been completed and confirmed."

Approved March 12, 1860.

Twelve Statutes at Large, 3.

The act making a grant of to the territory of Minnesota in alternate sections, to aid in the construction of certain railroads in said territory, and granting public lands in alternate sections to the state of Alabama, to aid in the construction of a certain railroad in said state, approved March 3, 1857, contained the following section making the grant:

That there be, and is hereby granted to the territory of Minnesota, for the purpose of aiding in the construction of railroads from Stillwater by way of Saint Paul and Saint Anthony, to a point between the foot of Big Stone lake and the mouth of Sioux Wood river, with a branch via Saint Cloud and Crow Wing, to the navigable waters of the Red River of the North, at such point as the legislature of said territory may determine; from Saint Paul and from Saint Anthony via Minneapolis to a convenient point of junction west of the Mississippi, to the southern boundary of the territory, in the direction of the mouth of the Big Sioux river, with a branch via Faribault to the north line of the state of Iowa, west of range sixteen; from Winona via Saint Peter to a point on the Big Sioux river, south of the forty-fifth parallel

of north latitude; also from La Crescent via Target lake up the valley of the Root river, to a point of junction with the last mentioned road east of range seventeen, every alternate section of land, designated by odd numbers for six sections in width, on each side of each of said roads and branches: *but in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said territory or future state to select, subject to the approval of the secretary of the interior, from the lands of the United States nearest to the lines of sections above specified, so much land, in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated,* or to which the rights of pre-emption have attached as aforesaid; which lands thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, shall be held by the territory or future state of Minnesota, for the use and purpose aforesaid: Provided, that the land to be so located shall in no case be farther than fifteen miles from the line of said roads or branches, and selected for, and on account of each of said roads and branches: Provided further, that the lands hereby granted for, and on account of said roads and branches severally, shall be exclusively applied in the construction of that road, for, and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever. *And provided further, that any and all lands heretofore reserved to the United States by any act of congress, or in any other manner by competent authority, for the*

purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are, hereby reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the president of the United States.

The act of congress of February 26, 1857, provided that the inhabitants enbraced within the boundaries of the state of Minnesota be, and hereby are, authorized to form for themselves a constitution and state government, and to come into the Union on an equal footing with the original states according to the federal constitution.

Eleven Statutes at Large, 166.

By the act entitled, an act for the admission of the state of Minnesota into the Union, approved May 11, 1858, congress enacted: That the state of Minnesota shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever. . . . . That from and after the admission of the state of Minnesota, as herein before provided, *all the laws of the United States* which are not locally inapplicable *shall have the same force and effect within that state* as in other states of the Union.

Eleven Statutes at Large, 285.

ASSIGNMENTS OF ERROR.

1. That the court below, seeing and perceiving that the lands in controversy were swamp lands within the meaning of the act of September 28, 1850, and that said act had been extended to the state of Minnesota, in and by the act of May 11, 1858, and that the line of said railroad was not definitely fixed adjacent to said lands until April, A. D. 1859, and that

the secretary of the interior had selected and certified said lands to the state of Minnesota, under said acts as swamp lands, and the state has received and lawfully conveyed the same to the appellant as such, did, notwithstanding, decide and adjudge that the appellant took no more than a naked legal title to the same, and that the appellee, by virtue of the grant of March 3, 1857, and the several acts of the legislature of Minnesota, and the location of its fixed line of road in April, 1859, had the equitable right to the title to said lands.

2. And there was manifest error in this, to-wit: That the court, seeing and perceiving that the act of February 28, 1850, pertaining to swamp lands, was extended to Minnesota in and by the act of May 11, 1858, admitting said state into the Union, and that the line of railroad was not fixed opposite the same until April, A. D. 1859, did, notwithstanding, hold that the grant, in and by the act of 1857, which by its terms could take effect upon the lands in controversy in April, 1859, was prior in its effect to the act of 1850, pertaining to swamp lands, expressly extended to Minnesota by the act of May 11, 1858.

3. And there was error in this: That said court did decide and adjudge that the act of 1850, concerning the swamp lands, had no force or effect upon said lands lying outside of states then in the Union.

4. And there was error in this: That said court did decide and adjudge that the act of March 12, 1860, was not in *pari materia* with the act of 1850, and would not give that act any force or effect in Minnesota and Oregon, until the passage of the said act of 1860.

5. And there was error in this: That said court did adjudge and decree against the appellant and in favor of the appellee, whereas by the law of the land said court should have ad-

judged and decreed in favor of the appellant and against the appellee.

Wherefore the appellant demands judgment that the judgment in this action, entered as aforesaid, be reversed, and said cause remanded with direction that the bill of the appellee be dismissed.

That the court may have the dates of the acts upon which the questions in this case turn, we reproduce them here, before proceeding with the argument.

Act granting the swamp lands in the states to each state in the Union. September 25, 1850.

Act granting lands to aid in construction of railroads. March 3, 1857.

Act admitting Minnesota as a state, and extending all laws not locally inapplicable. May 11, 1858.

Definite location of appellee's line of road adjacent to lands in controversy, April, 1859, from which time grant takes effect against sales or other disposition by the United States.

Act extending grant of swamp lands by act of 1850 to Minnesota and Oregon. March 12, 1860.

The lands were certified to the state by the honorable secretary of the interior under the swamp land act of 1850, and the title so granted to the state was conveyed to and vested in appellant, December 31, 1873.

BRIEF.

I.

The grant of the swamp lands lying in the respective states to the respective states in the Union, by the act of September 28, 1850, was a disposition and sale of such lands to the states wherein they might be found, whether such states were then organized and in the Union, or were afterward

organized and admitted, within the meaning of the provision of the act of 1857, "that if it appears, when the line of rail-"road is definitely fixed, that the United States have *sold* any "sections or parts of sections, an equal amount may be taken "within the fifteen mile limit," and also reserved the swamp lands to the United States for the purposes of internal improvements in the states organized and to be organized within the meaning of the last proviso of the first section of said act of 1857, and the lands in controversy were properly certified and patented to the state under the act of 1850.

II.

The act, admitting Minnesota into the Union, of May 28, 1858, placed Minnesota upon the same footing, as to *all* laws of the United States, as the other and most favored states. This would not operate as a grant of lands at that time, but to give the state the benefits of the act of 1850, and remove all doubt as to that act extending to and operating upon states subsequently admitted, by virtue of its own provisions. The object and duty of congress has always been to so legislate as to place states in like conditions and circumstances upon an equality of rights and privileges, and hence all legislation looking to that end should be liberally construed.

III.

The act of congress of March 12, 1860, was an act construing the act of 1850, and not an act making any new grant. At most it was a step to complete a grant pledged and made to Minnesota in 1850, and must be considered and treated as a part of the act of 1850, and by relation operate from that act.

IV.

The spirit of the grant of 1857 was to reserve from its operations all lands sold or reserved prior to the definite location of its line of road, and to make up the deficiency in the grant thereby occasioned from the indemnity lands provided.

V.

The legal effect of the act of 1850 was to reserve the swamp lands, wherever found, to the United States for the states of the Union respectively, wherein they might be found. This reservation and grant, although a grant *in præsenti*, so far as all rights under it are concerned, remained in compact in the nature of covenant running with the land until the surveys were extended and the selections and certifications to the respective states made, and when the surveys were extended and the lands selected and certified, the title which the United States had on the twenty-eighth day of September, 1850, or at any time thereafter, vested in the state. Before this the grant vested in compact: *it was right to the title;* after, in absolute grant: title in fee-simple to specific lands carrying all title and all rights as against the grantor and subsequent grantees from September 28, 1850.

Jackson *v.* MacMichael, 3 Cowen, 75.
Croly *v.* Wallace, 42 Missouri, 145.
Lands *v.* Brent, 10 Howard, 373.
Martin *v.* Marke, 7 Otto, 347.
Railroad Company *v.* Smith, 9 Wallace, 95.
French *v.* Fyan, et al, 93 U. S. 169.
Railroad Company *v.* Freemont Co., 9 Wallace, 89.
Wolcott *v.* Des Moines Company, 5 Wallace, 681.

ARGUMENT.

As the appellant claims that the issue of law involved in

this case has been considered and decided by this court in previous cases, we shall content ourselves with arguing all these points under one head, and citing and presenting the language of the court in the decisions heretofore rendered and opinions heretofore written, on the point here involved, and analogous points arising under the same grant, and reservations of the same terms as that of the act of March 3, 1857.

The court first construed the reservation proviso of the acts making railroad grants in the case of Wolcott *v.* Des Moines Co., 5 Wallace, 681, and held that the effect of the proviso was to reserve from the grant of May 15, 1856, all the lands granted to the territory of Iowa for the purpose of aid in the improvement of the navigation of the Des Moines river by the act of August 8, 1846, which should fall within the limits of the railroad grant; that the grant to the territory for this purpose in 1846 was a reservation for purposes of internal improvement, within the meaning of the proviso and reservation of the act of 1856.

In the case of the Railroad Company *v.* Fremont County, 9 Wallace, 94, the court said: "It will be seen from an ex-"amination of the grant made to the railroad company by "the act of May 15, 1856, that the reservations annexed to "it are very full and explicit. They are first found in the "enacting clause itself, where provision is made for the se-"lection of lands beyond the lines of the six sections on each "side of the road in case any of the sections *had been sold or* "*previously disposed of*, and then again to the general pro-"viso to the grant. These reservations clearly embrace the "previous grant of the swamp and overflowed lands for the "purpose of enabling the states to redeem them and fit them "for cultivation by levees and drains."

In Railroad Company *v.* Smith, 9 Wallace, 96, this court

adhered to the above doctrine, and further held that in a suit brought by a railroad company to recover lands claimed to fall within its grant, and the issue of fact was whether it fell under the grant to the railroad company or the grant to the states under the swamp land grant, parol evidence might be introduced to determine whether said land was of the class that would fall under the grant or the reservation, where the secretary of the interior had refused or failed to act. In the pending case, the secretary has selected and certified the lands, and there is no question as to the character of the lands. In that case the court use the following language (page 99): "Congress has here given a criterion apparently not difficult "of application, by which to determine what was granted, to "wit: such legal subdivisions of the public lands the greater "part of which were so far swamp and overflowed as to be "too wet for cultivation. Now here is a present grant by "congress of certain lands to the states within which they "lie, but it is by a description which requires something more "than a mere reference to their townships, ranges and sec- "tions to identify them as coming within it. In this respect "it is precisely like the railroad grants, which only became "certain by the location of the road. In fact, in this regard "the swamp land grant was the more specific, for *all* the lands "of that description *were granted*, and they have *remained so "granted ever since*, while no particular land was described by "the railroad grant, which was a float to be determined by "the choice of the line of the road in future. No act of "congress has ever attempted to take back this grant of the "swamp lands, or to forfeit it, *or to give it to any other grantee*, "or modified the description by which they were given to "the states. It was protected by positive reservation in the "grant under which plaintiff claims."

In French *v.* Fyan, 93 United States, 169, this court uses

the following language: "This court has decided more than "once that the swamp land act was a grant *in præsenti*, by "which the title to those lands passed at once to the state in "which they lay, except as to states admitted to the Union "after its passage. The patent, therefore, which is the evi- "dence that the lands contained in it had been identified as "swamp lands under that act, relates back and gives certainty "to the title of the date of the grant. As that act was "passed two years prior to the act granting lands to the state "of Missouri for the benefit of the railroad, the defendant "had the better title on the face of the papers, notwithstand- "ing the certificate to the railroad company for the same "land was issued three years before the patent to the state "under the act of 1850. For while the title under the swamp "land act, being a present grant, takes effect *as of the date of* "*that act, or of the admission of the state into the Union when this* "*occurred afterward*, there can be no claim of an earlier date "than that of the act of 1852, two years later, for the incep- "tion of the title of the railroad company."

The different interpretation and force placed upon the above language by the parties to this action and their respective counsel has probably led to this litigation. The appellant claims that the appellee's bill should be dismissed in this case upon either construction. The court clearly holds that the swamp land grant was a valid and effectual grant as to states not in the Union at the date of its passage but admitted subsequently. Now the position of the appellee is, as we understand it, under this doctrine, that this swamp land grant as to Minnesota had its inception on the admission of Minnesota into the Union, May 11, 1858, and that its grant had its inception March 3, 1857, and should therefore prevail over the swamp land grant. Our answer to this position is two-fold. Assuming, for the purpose of the argument

merely, that such is the fair statement of the doctrine, the swamp land grant should prevail for the reason that it was a sale of this land lying within the limits of the railroad grant prior to its definite location of its line of road. And, second, that such is not a fair or correct statement of the doctrine of the court. That the court did not intend to hold, and did not hold, that the inception of title in states admitted into the Union after the passage of the act of 1850, was at the date of admission, but simply, that the act took effect then as to this state, became operative, became a grant in fee-simple. That before admission these lands stand reserved by the United States for the purpose of internal improvement, to be made by and through the agency of the states: after admission they are sold—vested in the states for the purposes specified in the act. Before the admission of a state, the title to these swamp lands within its borders stands in the United States: it is because there is no grantee in whom the same can vest, *but it stands in reservation and in compact*, and upon the admission of the state it takes effect as to the grantee, the state. In other words, *the grantor, if he chooses to stand by the grant, as has been done by congress here, is bound by it from its date, and the grantee takes the benefit of it as soon as capable to take title, and that as against the grantor and all others when the title vests, it carries all the title the grantor had on the day of the grant or at any subsequent time.* This court has held after the most careful and exhaustive review of all the authorities, that grants of land for public or charitable uses will pass the title out of the donor or grantor "*without a* "*grantee* by way of *public appropriation* or dedication to "pious uses." "In this respect it would form an exception "to the generality of the rule, that to make a grant valid "there must be a person *in esse* capable of taking it." In such cases the fee of the land remains in abeyance "or be

"like the *hereditas jacens* of the Roman code in expec-
"tation of an heir . . . ." "This conforms ex-
"actly to the doctrine of the civil law which, as to pious
"donations, Bracton has not scrupled to affirm to be the
"law of England."

"Nor is this a novel doctrine in the common law. In the
"familiar case where a man lays out a public street or a
"highway, there is, strictly speaking, no grantee of the
"easement, but it takes effect by way of grant or dedica-
"tion to public uses . . . . These principles may
"seem to savor of the ancient law, but in a modern case
"in which argument the doctrine was asserted, Lord
"Hardwick did not deny it, but simply decided that the
"circumstances of the case did not amount to a donation of
"the land, on which a chapel had been built, to public and
"pious uses. Attorney-General *v.* Foley, 1 Dick. R., 363.
"And in an intermediate period Chief Justice Dyer held,
"that if the crown by statute renounced an estate, the title
"was gone from the crown, although not vested in any
"other person, but the fee remained in abeyance."

"For the reasons then that have been stated, a donationby
"the crown for the use of a non-existing parish church, may
"well take effect by the common law as a dedication to pious
"uses, and the crown would thereupon be deemed the
"patron of the future benefice when brought into life. And
"after such a donation it would not be competent for the
"crown to resume it at its own will or *alien the property*
"without the same consent which is necessary for the aliena-
"tion of other church property, namely the consent of the
"ordinary and parson if the church be full, or in a vacancy of
"the ordinary alone."

Town of Pawlet *v.* Daniel Clark 9 Cranch, 292. Quotations from pages 331 and 332. The swamp land grant was a do-

nation to the states *in esse* and not *in esse* for public use, and the fee is gone from the sovereignty from the date of the act, and as to the states not *in esse* remains in abeyance, and the sovereignty cannot resume nor again aliene the same. And as the act of 1860 was passed for the benefit of Minnesota, the court surely will not hold that the state is to be prejudiced thereby. This act was without any effect. These swamp lands were then owned by Minnesota, and Congress and the United States had no title in them to grant or take away. There were no conditions to the grant of 1850.

We have dared to engage the attention of the court to this extent upon this question, notwithstanding all the court has decided and written upon these grants, because no case decided has turned upon the precise point presented here, and because the court below adopted a view of the law and decisions which seem to us unsound and unsupported by any case decided by this court, or by any doctrine of any case, and against the general principles adopted by this court in relation to these grants.

JOHN B. SANBORN,
Counsel for Appellant.

JOHN B. & W. H. SANBORN,
Attorneys for Appellant.

110-685

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 834

DANIEL RICE,

Appellant,

vs.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY,

Appellee.

Points and Authorities of Appellee.

E. C. PALMER,

Counsel for Appellee.

J. W. Cunningham & Co., Print.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 834.

DANIEL RICE, *Appellant*,

vs.

THE SIOUX CITY AND ST. PAUL RAILROAD COMPANY, *Appellee.*

POINTS AND AUTHORITIES OF APPELLEE.

The appellee claims title to the lands in controversy, under and by force of the following act of the Congress of the United States, approved March 3d, 1857:

An act making a grant of land to the territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of a certain railroad in said State.—(*Statutes at Large, Vol.* 11, *Ch.* 99, *p.* 196.)

Be it enacted by the Senate and House of Represenatives of the United States of America, in Congress assembled, That there be, and is hereby granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads, from Stillwater, by the way of Saint Paul and Saint Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, with a branch *via* Saint Cloud and Crow Wing, to the navigable waters of the Red River of the north, at such point as the Legislature of said Territory may determine; from Saint Paul and from Saint Anthony, *via* Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the Territory in the direction of the mouth of the Big Sioux River, with a branch *via* Faribault to the north line of the State of Iowa, west of range sixteen; from Winona, *via* Saint Peter, to a point on the Big Sioux River, south of the forty-fifth parallel of north latitude; also from La Crescent, *via* Target

Lake, up the valley of Root River, to a point of junction with the last mentioned road, east of range seventeen, every alternate section of land designated by odd numbers, for six sections in width on each side of each of said roads and branches; but in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said Territory or future State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the right of pre-emption have attached as aforesaid; which lands, (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections, and parts of sections, designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the Territory or future State of Minnesota, for the use and purpose aforesaid; *Provided*, That the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said roads or branches; *Provided further*, That the lands hereby granted for and on account of said roads and branches, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever; *And provided further*, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads and branches, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry, until the same shall have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said Territory or future State, shall be subject to the future disposal of the legislature thereof for the purposes herein expressed, and no other; and the said railroads and branches shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation

of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said Territory or future State shall be disposed of by said Territory or future State only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches, and included within a continuous length of twenty miles of each of said roads and branches may be sold; and when the Governor of said Territory or future State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed, as aforesaid, and included within a continuous length of twenty miles of each of such roads or branches, may be sold; and so from time to time, until said roads and branches are completed; and if any of said roads or branches is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads and branches, under the direction of the Post Office Department, at such price as Congress may by law direct; *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

SEC. 6. *And be it further enacted*, That in case any lands on the line of said roads or branches are within any Indian Territory, no title to the same shall accrue, nor shall the same be entered upon by the authority of said Territory or State, until the Indian title to the same shall have been extinguished.

SEC. 7. *And be it further enacted*, That there be, and is hereby granted to the State of Alabama, for the purpose of aiding in the construction of a railroad "from the line of Georgia, on the Chattahoochee River, to the city of Mobile, Alabama," through the counties of Henry, Dale, Coffee, Covington, Conecuh, Baldwin and Mobile, and a branch railroad "from Eufaula to Montgomery, through the counties of Barbour, Pike, Macon and Montgomery," chartered by the State of Alabama by an act entitled "An act to authorize the Savannah and Albany Railroad Company to extend their railroad from the line of Georgia on the Chattahoochee River, to the city of Mobile, Alabama, and to extend a branch road from Eufaula to Montgomery," approved December twentieth, eighteen hundred and fifty-three, alternate sections of the public lands to the same extent, and in the same manner, and upon the same limitations and restrictions in every respect as was granted to aid in the construction of other railroads, under an act of Congress, entitled "An act granting public land in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State," approved June three, eighteen hundred and fifty-six.

Approved March 3, 1857.

The appellant rests his claim of title to the same lands, upon the

following acts:

An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits.

Statutes at Large, Vol. 9, p. 519.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein; the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act shall be, and the same is hereby granted to said State.

SEC. 2 *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and at the request of said Governor cause a patent to be issued to the State therefor, and on that patent the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof; *Provided however*, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal sub-divisions, the greater part of which is wet and unfit for cultivation, shall be included in said list and plats, but when the greater part of a subdivision in not of that character, the whole of it shall be excluded therefrom.

SEC. 4. *And be it further enacted*, That the provisions of this act be extended to and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.

Approved September 28, 1850.

An act to extend the provisions of an act to enable the State of Arkansas and other States, to reclaim the swamp lands within their limits, to Minnesota and Oregon, and for other purposes.

Statutes at Large, Vol. 12, p. 3.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress entitled, "an act to enable the State of Arkansas and other states to reclaim the swamp lands within their limits, approved Sept. 28, 1850, be, and the same are hereby extended to the States of Minnesota and Oregon; *Provided*, that the grant hereby made shall not include any lands which the Government of the United States may have reserved, sold or disposed of, (in pursuance of any law heretofore enacted,) prior to the confirmation of title to be made, under the authority of the said act.

SEC. 2. *And be it further enacted*, That the selection to be made from lands already surveyed in each of the States, including Min

nosota and Oregon, under the authority of the act aforesaid, and of the act to aid the State of Louisiana in draining the swamp lands therein, approved March 2, 1849, shall be made within two years from the adjournment of the legislature of each State at its next session, after the date of this act, and as to all lands hereafter to be surveyed within two years from such adjournment, at the next session, after notice by the Secretary of the Interior to the Governor of the State, that the surveys have been completed and confirmed.

Approved March 12, 1860.

It is expressly stipulated that the appellee is grantee of the State under said act of March 3, 1857, that it duly located and built its line of road, and that the lands in controversy lie within six miles or granted limit of its line of definite location, and belong to appellee or said appellant herein.

Record pp. 24-25-26.

The sole question is whether said lands, which were situated within the limits of the territory of Minnesota at the date of the passage of said act of Sept. 28, 1850, and of March 3, 1857, had been granted or reserved by the first named act, and so were not embraced within the act of March 3, 1857, or whether being a part of the public domain, they were granted to the said territory for a specific purpose by the latter act.

Our legal propositions are:

I.

THAT THE ACT OF SEPT. 28, 1850, WAS CONFINED TO STATES THEN EXISTING, "STATES OF THE UNION."

(*a.*) Such are its terms. The beneficiaries are specifically designated. Minnesota not being one nor any other Territory. Minnesota was then a Territory with defined boundaries which were greatly changed and reduced, when a State was formed and admitted into the Union. The grant was specific in its purpose as well as in its grantees, and must be construed strictly. A *grantee* cannot be supplied by implication.

There is no room for implication—no ground or necessity for importing into the act a new term, or an additional beneficiary. The grant is express, clear, unambiguous.

(*b.*) The practice of the land department, the decision of the courts, and the action of Congress, all show that the benefits conferred by the act of September 28, 1850, were confined to States then existing.

Copp's Public Land Laws. 474.
French vs. Fryan, 3 *Otto* 169, *per Miller, J.*
Act of Congress of March 12, 1860.

II.

THE ACT OF MARCH 3, 1857, UNDER WHICH APPELLEE CLAIMS, WAS A GRANT *in presenti*, TRANSFERING AT ONCE A TITLE TO LAND TO BE SUBSEQUENTLY DESIGNATED.

Schulenberg vs. Harriman, 21 *Wall* 60-62.
Newhall vs. Sanger, 92 *U. S.*, 761-2-3.
Mo. K. & I. R. Co. vs. Kan. Pac. R. Co., 97 *U. S.*, 491.
Leavenworth, etc., R. R. Co. vs. U. S., 2 *Otto*, 733.

III.

THE CERTIFICATION BY THE SECRETARY OF THE INTERIOR AND THE CONVEYANCE BY THE GOVERNOR OF MINNESOTA, OF THESE LANDS TO THE APPELLANT, WERE NULLITIES

Revised Statutes U. S., *p.* 449, *sec* 2449.
Polk's Lessees vs. Wendell, 9 *Cranch.*, 87-99.
U. S. vs. Stone, 2 *Wall*, 535.
Schulenberg vs. Harriman, 21 *Wall*, 59.
Leavenworth R. R. Co. vs. U. S., 92 *U. S. Rep.* 739.
Cedar Rapids & Mo. Ry. Co. vs. Co. of Sac. 46 *Ia.*, 245-6.

IV.

THE LANDS IN CONTROVERSY ARE EXPRESSLY EXCLUDED FROM THE OPERATION OF THE ACT OF MARCH 12, 1860, BY THE PROVISO OF THE FIRST SECTION—

That proviso reads: "Provided that the grant hereby made shall not include any lands that the government of the United States may have reserved, sold, or disposed of (in pursuance of any law heretofore enacted), prior to the confirmation of title to be made under the authority of the said act."

The scope and office of this proviso are unmistakable.

It is intended to settle questions of conflicting titles—to recognize prior grants as conferring prior or paramount rights, and to make the date of confirmation of title, under the act, the time test, not the date of the passage of the act.

There is no basis for the claim that the act of September 28, 1850, was the enunciation of a settled policy to donate all the swamp lands to new States, or any States except those designated, nor to Territories. That act is specific, not only as to grantees, but subject matter The grantees are named, and the lands donated must be of a certain character, to-wit, "swamp and overflowed lands," at the date of the passage of the act, September 28, 1850. It would require language of unmistakable import to warrant the court in holding that congress intended to exclude from the disposing power of the general government a large and undefined tract of the public domain, and let it lie as so much dead property to await the slow action of border communities and the change from national to State governments, which might never occur.

We are not aware that swamp lands in Utah are regarded as reserved and held to await the extinction of polygamy.

The terms of the act of March 12, 1860 (aside from the proviso) show that there was no intention to antedate the operation of the grant Extending the provisions of the act of September 28, 1850, to the States of Minnesota and Oregon, does not incorporate into the latter law the *date* of the passage of the earlier, but merely makes the same donation in substance to the new States that had been previously made to the old.

The passage of the act of March 12, 1860, was a nugatory proceeding on appellant's theory. If the act of Sept. 28, 1850, operated upon all the swamp lands then existing within the public domain, as well without as within the designated States, there was no necessity to pass the act of March 12, 1860, for on that theory, the provisions of the former act had always extended, not only to Minnesota and Oregon, but to all other Territories wherein such lands were situated.

To give the act of 1860 any force, it must be held to be a new grant of lands of a particular class, situated within certain fixed limits, and conferred upon a new grantee with full power of disposition; all prior grants of *swamp lands* being expressly excluded by the terms of the proviso.

This act is a legislative declaration, that there was no prior grant of swamp lands to Minnesota, and that there had been grants of such lands within her borders for other purposes, which should not be imperiled by the extension of the act of 1850, over the domain within which such prior granted swamp lands were located.

V.

THE TITLE TO THE LAND IN CONTROVERSY WAS IN THE UNITED STATES, ON MARCH 3, 1857, AND WAS EMBRACED IN THE ACT OF THAT STATE UNDER WHICH APPELLEE CLAIMS, AND UPON DEFINITE LOCATION OF ITS ROAD, PRIOR TO APRIL, 1859, SAID LAND BECAME ATTACHED TO ITS GRANT BY SPECIFIC DESCRIPTION AS OF THE DATE OF MARCH 3, 1857.

Gibson vs. Choteau 13, *Wall* 92.
Shepley vs. Cowan, et. al. 1, *Otto.* 330.
Learnworth vs. U. S. 2, *Otto.* 733.

It will be seen from the points and authorities above made and cited that the appellant has misapprehended our position in this controversy. We do not admit that Minnesota acquired title to these swamp lands upon admission into the Union by force of the act of Sept. 28, 1850, or otherwise. The Congress might or might not make her a grantee of such lands, but without some specific action by Congress the swamp lands, if any, within her limits, remained the property of the United States. And acting upon this theory, certain states were treated differently from those states of the Union which were specially made grantees in the act of 1850.

Act of March 12, 1860.
U. S. Rev. Statutes, Secs. 2479-2490.
Act authorizing Minnesota to form a State Government, Sec. 5.
Con. of Minn., Article 11, *Sec.* 3.
Statutes of Minn. 15-19.
Cop. Public Land Laws, p. 474.

The authorities cited by appellee are not in point.

In each of those cases, except one, the grantee was one of the states of the Union at the date of the passage of the act of Sept. 28, 1850, and in the case from 5 Wall, there was an express grant to the Territory of Iowa. The clause quoted from opinion in 93 U. S., 169, which refers to the swamp land act as taking effect at its date, *or upon the admission of the State into the Union. when this occurred afterward*, was not as to this last sentence called for by anything in the case, and was not intended to decide any such question. For, aside from the fact that the court was not required to decide such point, the opinion previously states that the swamp land act was a grant *in presenti* by which the title to those lands passed at once to the state in which they lay, *except as to states admitted into the Union after its passage.*

This means, that, as to after-admitted States, the act was not a grant *in praesenti*, nor a grant of any kind. And if it was not a present grant as of its date, it could have no force as against the act of March 3, 1857, which was a present grant, and gave the land in controversy to the Territory of Minnesota for another purpose.

Counsel, therefore, are in error in asserting that "The court clearly holds that the swamp land grant was a valid and effectual grant as to States not in the Union at the date of its passage, but admitted subsequently." The question has never been before this court until now, and the court, as we read its published judgments, has not even intimated that such is the law.

Such construction of the act of September 28, 1850, would be at variance with the uniform practice of the Land Department from that day to this, and would produce endless confusion in titles derived under these grants, and on the faith of which millions of dollars have been expended for the benefit of States and Territories wherein such lands lie. It would also be at variance with the act of 1860 and other acts on the subject, and a judicial declaration of the invalidity of such enactments and a direct reflection on the intelligence of the legislative department of the Government of the United States.

But if Minnesota became a grantee by force of the act of admission as a State, she could only take such swamp land as had not previously been granted for other purposes to other grantees.

It would then be a case of conflict between grants, and the invariable rule is that the earlier grant must prevail.

M. K. & T. Ry. Co. vs. The Kansas Pac. Ry. Co., 7 *Otto*, 491.

The doctrine of relation does not aid the appellant. The deed from the State of Minnesota, under which appellant claims, cannot reach back to a date when there was no such State. This would be a very

novel application of that doctrine, and has no support in adjudicated cases. The right of Minnesota to swamp lands was not claimed or recognized, nor any such lands certified by the Secretary of the Interior for her benefit, until after the passage of the act of March 12, 1860.

Laws of Minn., 1865, *Ch. V., p.* 15.

The case from 9 Cranch 292 is not in point.

In that case the grants were specific—one share to each of sixty-two persons, two shares to B. Wentworth, *one share for a glebe for the the Church of England, as by law established.*

The Court held that the clause in italics was good as a grant, although there was no church in Pawlet at the date of the charter. The case was peculiar and need not be examined at length. It is sufficient to note that the share granted was specifically described and limited.

In the act of September 28, 1860, there was also a specific description of each grant, and of each grantee also.

Nothing is left to implication or to make the grant operative as to every part. A clause might have been inserted to the effect that such Territory then existing or subsequently formed should, when admitted into the Union as a State, become entitled to the swamp lands within the state limits, and the Land Department might have been directed to set apart and withhold from sale or pre-emption all such public lands, wherever situated, but this was not done, and there is not a word in the act of 1850 indicative of such intention, or upon which the idea of such a grant or reservation can rest. It is wholly fanciful and without merit.

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